

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BILLY J. PIATT,	:	Case No. 1:08-cv-415
	:	
Plaintiff,	:	Chief Judge Susan J. Dlott
	:	Magistrate Judge Timothy S. Black
vs.	:	
	:	
TERRY COLLINS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF’S MOTION FOR
DEFAULT JUDGMENT (Doc. 14) BE DENIED**

Plaintiff is an inmate presently incarcerated at the Southern Ohio Correctional Facility (“SOCF”) who brings this *pro se* action alleging that he was denied adequate medical care. (Doc. 8).

This matter is currently before the Court on Plaintiff’s motion for default judgment. Plaintiff alleges that Defendants Dr. Martin Sevrey, Dr. James McWeeney, and Rhoda Stalnaker (collectively, “Defendants”) were properly served with the summons and complaint but failed to answer or otherwise respond. (Doc. 14). Specifically, Plaintiff alleges that Defendants were served on August 1, 2008. (*Id.*) However, the record indicates that the summons and complaint were *issued* to Defendants on August 1, 2008.

The record further indicates that Defendants Sevrey and McWeeney were never properly served because the summons were returned unexecuted. (Doc. 15). Therefore, default judgment against Defendants Sevrey and McWeeney would be improper at this time.

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

Defendant Stalnaker received service of the summons and complaint on October 21, 2008 (Doc. 17, Ex. A) and had twenty days from that time to respond (November 10, 2008). *See* Fed. R. Civ. P. 12(a)(1)(A). On November 7, 2008, Defendant Stalnaker filed an answer responding to Plaintiff's complaint. (Doc. 16). Therefore, Plaintiff responded within the requisite time period. *See* Fed. R. Civ. P. 55 (to obtain default judgment a plaintiff must show that the time in which to respond to a complaint has expired).

Accordingly, based on the foregoing, the undersigned **RECOMMENDS** that Defendant's motion for default judgment (Doc. 8) be **DENIED**.

Date: February 3, 2009

s/ Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **TEN (10) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).